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2012 IL App (4th) 101035-U

Filed 5/21/12

NO. 4-10-1035

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
MAURICE E. WATTS,	)	No. 10CF153
Defendant-Appellant.	)	
	)	Honorable
	)	Leslie J. Graves,
	)	Judge Presiding.

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JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Appleton and Pope concurred in the judgment.

### ORDER

¶ 1 *Held:* The appellate court affirmed as modified, concluding that (1) the State presented sufficient evidence to convict the defendant of unlawful possession of a weapon by a felon, (2) the trial court's failure to comply with Illinois Supreme Court Rule 431(b) (eff. May 1, 2007) was not plain error, and (3) the court's written judgment must be modified to reflect the court's intent to award the defendant 225 days of sentencing credit.

¶ 2 Following a July 2010 trial, a jury convicted defendant, Maurice E. Watts, of unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2010)). The trial court later sentenced defendant to 8 years in prison, ordering from the bench that defendant receive 225 days of credit for time served.

¶ 3 Defendant appeals, arguing that (1) the State failed to prove him guilty beyond a reasonable doubt and (2) he is entitled to a new trial because the trial court failed to comply with

Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)) . Alternatively, defendant contends that the court's written judgment must be corrected to reflect its intent to award defendant 225 days of sentencing credit. Because we agree only that the court's written sentencing judgment must be corrected, we affirm as modified and remand with directions that the court correct its sentencing judgment to reflect 225 days of credit against defendant's sentence.

¶ 4

## I. BACKGROUND

¶ 5 In March 2010, the State charged defendant, in pertinent part, with unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2010)). Defendant's trial on that single count commenced in July 2010.

¶ 6

### A. Defendant's July 2010 Jury Trial

¶ 7

During jury selection at defendant's July 2010 trial, the trial court instructed the venire—at some points individually and at other points as a group—as follows: (1) "Do you understand that the fact that a person is charged with a crime is not in any way evidence against him or her?"; (2) "You also understand that in our system of justice that a person charged with a crime is presumed innocent throughout all of the proceedings against him or her and that presumption stays with them the entire time[?]; (3) "Do you also understand that the State has the burden of proving the Defendant guilty beyond a reasonable doubt. That burden never shifts to the Defendant. Do you understand that?"; and (4) "Do you also understand and agree with the principle and all these principles actually that a Defendant is never required to prove his or her innocence?" The jurors responded affirmatively. The court thereafter impaneled the jury and the parties began presenting their respective evidence and argument.

¶ 8           The State presented evidence that four police officers were on duty around 8:30 p.m., patrolling a high crime area. One of the officers noticed defendant standing in front of an address from which defendant had previously been banned. When one of the officers approached defendant, the officer noticed defendant's left arm "clenched tightly to the left side of his body," which the officer noted that in his experience and training was indicative of someone concealing a weapon. The officer approached defendant and began patting him down. The officer testified that when he patted defendant's waistline, he felt what he believed to be the handle of a gun. The officer asked defendant what the object was and defendant opened his hand to reveal a cellular telephone, a "small dark flip phone."

¶ 9           Unconvinced, the officer reached back to feel defendant's waistband, at which point defendant turned and ran. The officer described the chase for the jury through the following exchange with the prosecutor:

"[PROSECUTOR]: Could you describe what you observed while the Defendant was running[?]

[OFFICER]: Yes. Initially, as I was running behind him, like I said earlier, we ran in front of the apartment complexes and then through the apartment complexes. When we got to the rear I noticed the subject began to run in a real awkward manner. Hands went to the front of his waistband area in an awkward manner at a slow pace for approximately 10 feet, and then began to run normal again at the same pace he was initially.

\* \* \*

[PROSECUTOR]: What did you do at the conclusion of the chase?

[OFFICER]: Approximately, like I said, a hundred[-]fifty feet from where it initially started we were able to gain control of [defendant] and place him in handcuffs in the backyard of the complex.

[PROSECUTOR]: Were you the only officer chasing the Defendant?

[OFFICER]: No. [Two other officers] were in pursuit behind me.

[PROSECUTOR]: There was a fourth officer?

[OFFICER]: [A fourth officer] got back in the marked squad car and drove around the block to cut off any angles the subject could have run through the apartments, at which point we wouldn't get him.

[PROSECUTOR]: Okay, during your chase did you attempt to stop the Defendant?

[OFFICER]: Yes, I \*\*\* fired my [T]aser in his direction.  
\*\*\* [T]he [T]aser had no effect on him and he continued to flee.

[PROSECUTOR]: Do you know if you hit him or not?

[OFFICER]: The barbs were not in him when we made contact. I didn't faze him or make him stop.

\* \* \*

[PROSECUTOR]: What did you do after the Defendant was arrested?

[OFFICER]: Placed him in handcuffs. [Another officer] arrived immediately, at which point [that officer] traced back our steps of the foot chase from where it originally started. The backyards \*\*\*, like I said, are wide open. You can see for several feet each direction. There was nobody else outside during the entire foot chase. [The officer] walked back the same steps we took. As he had gone approximately 60 feet from where we had him in handcuffs, [that officer] saw [another officer's hat] he was wearing that evening laying [sic] on the ground, and next to his hat was a gun on the ground. "

The officer went on to testify that the gun was dry. On cross-examination, defense counsel pointed out that the officer's police report indicated that the grass was wet from rain that had fallen earlier in the day. The officer indicated that he could only recall that the grass was wet; there "was like a dewey, wet feeling to the grass."

¶ 10 The officer who recovered the gun also testified. He corroborated the arresting officer's testimony, adding that when he found the gun, he removed "rounds" from the gun's cylinder. The State later presented evidence that defendant had been previously convicted of a felony. The State also called a forensic scientist who testified that the fingerprints found on the gun were "unsuitable for comparison."

¶ 11 Defendant did not testify or present any other evidence in his defense.

¶ 12 Following closing arguments, the trial court read the jury its instructions, which included (1) the presumption that defendant was innocent, (2) the fact that the State had the burden of proving defendant guilty, (3) the fact that defendant was not required to prove his innocence, and (4) the fact that defendant's failure to testify "must not be considered by [it] in any way" in arriving at its verdict.

¶ 13 B. Defendant's Verdict and Sentence

¶ 14 On this evidence, the jury convicted defendant of unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2010)). Following an October 2011 sentencing hearing, the trial court sentenced defendant to 8 years in prison, ordering from the bench that defendant receive 225 days of credit for time served. The court's sentencing order later reflected the 8-year sentence but noted that defendant was entitled to 185 days of credit for time served.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant argues that (1) the State failed to prove him guilty beyond a reasonable doubt and (2) he is entitled to a new trial because the trial court failed to comply with Supreme Court Rule 431(b). Alternatively, defendant contends that the court's written judgment must be corrected to reflect its intent to award defendant 225 days of sentencing credit. We address defendant's contentions in turn.

¶ 18 A. Defendant's Claim That the State Failed To Prove  
Him Guilty Beyond a Reasonable Doubt

¶ 19 Defendant first contends that the State failed to prove him guilty beyond a

reasonable doubt. Specifically, defendant asserts that the State failed to link him to the gun found in the grass, and that, indeed, it is "highly unlikely that any person in his or right mind would spontaneously present incriminating evidence to the police" by throwing it away as he tried to escape. We disagree.

¶ 20 This court recently outlined the standard for reviewing a defendant's challenge to the sufficiency of the State's evidence, as follows:

" 'When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006). This standard of review applies when reviewing the sufficiency of evidence in all criminal cases, including cases based on direct or circumstantial evidence. *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002). 'Circumstantial evidence alone is sufficient to sustain a conviction where it satisfies proof beyond a reasonable doubt of the elements of the crime charged.' *Pollock*, 202 Ill. 2d at 217, 780 N.E.2d at 685.

The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences

from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). '[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt.' *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496–97 (2008)." *People v. Burney* 2011 IL App (4th) 100343, ¶ 24-25.

"In Illinois, in order to prove unlawful possession of a weapon by a felon, the State must prove beyond a reasonable doubt that the defendant (1) knowingly possessed a firearm and (2) has been convicted of a felony." *People v. Gibson*, 403 Ill. App. 3d 942, 950, 934 N.E.2d 611, 618 (2010); 720 ILCS 5/24-1.1(a) (West 2006).

¶ 21 The evidence, viewed in the light most favorable to the State, showed that a police officer approached defendant—a convicted felon—who was standing in front of an address from which defendant had previously been banned. The officer patted him down. The pat down revealed what appeared to be the handle of a gun in defendant's waistband. The officer asked defendant what was in his waistband reached back to feel what was there, and defendant turned to run. A chase ensued. As defendant was being pursued by three officers on foot and one officer in a squad car, defendant concluded that he was not going to be capable of evading capture. With this in mind, knowing that he was a felon, defendant elected to toss his gun in the hopes that when he was apprehended he would not be caught in possession of the gun. A reasonable jury could have found that this evidence showed that (1) defendant knowingly possessed a firearm and (2) had been convicted of a felony.



¶ 22

B. Defendant's Claim That the Trial Court's Failure  
To Comply With Rule 431(b) Requires a New Trial

¶ 23

Defendant next contends that he is entitled to a new trial because the trial court failed to comply with Rule 431(b). Specifically, defendant asserts that because the court failed to instruct the jury that his failure to testify could not be used against him before the State presented its evidence, and the evidence was closely balanced and the error was so substantial that it affected the fundamental fairness of the trial, he is entitled to a new trial. The State responds that although the court failed to strictly comply with Rule 431(b), the error was not so serious that it kept defendant from receiving a fair trial. We agree with the State.

¶ 24

Initially, we point out that when the trial court makes an error, a defendant must do two things in order for us to review the error on appeal: (1) a defendant must object at the time the court makes the error and (2) a defendant must raise the error again in a posttrial motion. *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 39, 959 N.E.2d 693, 700. In this case, defendant took neither of those steps as to the Rule 431(b) error, and he concedes that as a consequence, he has forfeited review of that error. Nevertheless, defendant urges this court to disregard his forfeiture because the court's error amounts to plain error. The doctrine of plain error allows us to review a forfeited error when (1) the evidence in the case was so closely balanced that the error might have been the deciding factor that tipped the scales in favor of conviction or (2) the error was so serious that regardless of whether the evidence was closely balanced, the error denied the defendant a substantial right and therefore a fair trial. *People v. Herron*, 215 Ill. 2d 167, 178-79, 830 N.E.2d 467, 475 (2005).

¶ 25

Under the plain language of Rule 431(b), a trial court has the option of

questioning the potential jurors as a group or individually. The rule reads as follows:

"(b) The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.

The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

¶ 26 Merely asserting a violation of Rule 431(b) is insufficient to demonstrate that the error affected the fairness of a defendant's trial. Indeed, "the failure to conduct Rule 431(b) questioning does not necessarily result in a biased jury \*\*\*." *People v. Thompson*, 238 Ill. 2d 598, 614, 939 N.E.2d 403, 414 (2010).

¶ 27 In this case, the trial court instructed the jury that (1) the fact that a person is charged with a crime is not in any way evidence against him, (2) in our system of justice, a person charged with a crime is presumed innocent throughout all of the proceedings against him

and that presumption stays with them throughout the case, (3) the State has the burden of proving defendant guilty beyond a reasonable doubt and that burden never shifts to defendant, and (4) a defendant is not required to prove his innocence. At the close of evidence, the trial court read the jury its instructions, which included (1) the presumption that defendant was innocent, (2) the fact that the State had the burden of proving defendant guilty, (3) the fact that defendant was not required to prove his innocence, and (4) the fact that defendant's failure to testify "must not be considered by [it] in any way" in arriving at its verdict. In short, although the trial court did not strictly comply with Rule 431(b), our review of the record shows that defendant was not deprived of a fair trial. See *Thompson*, 238 Ill. 2d at 614, 939 N.E.2d at 414 (the fact that the jury was admonished and instructed on the Rule 431(b) principles before it began its deliberations was sufficient).

¶ 28 We note in closing, however, that we are surprised to see this issue continuing to arise, given the ease with which compliance with Rule 431(b) can be achieved. In light of the long line of cases discussing this issue, we expect that compliance will not be an issue in the future. *Thompson*, 238 Ill. 2d at 614, 939 N.E.2d at 414 ; *People v. Blankenship*, 406 Ill. App. 3d 578, 580-84, 943 N.E.2d 1111, 1113-1116 (2010); *People v. Stewart*, 406 Ill. App. 3d 518, 531-36, 940 N.E.2d 273, 284-87 (2010); *People v. Staple*, 402 Ill. App. 3d 1098, 1105-08, 932 N.E.2d 1064, 1070-73 (2010); *People v. Crow*, 403 Ill. App. 3d 698, 700-06, 955 N.E.2d 25, 27-31 (2010); *People v. Willhite*, 399 Ill. App. 3d 1191, 1194-97, 927 N.E.2d 1265, 1268-70 (2010); *People v. Williams*, 409 Ill. App. 3d 408, 412-18, 947 N.E.2d 900, 904-10 (2011); *People v. Yusuf*, 409 Ill. App. 3d 435, 437-42, 949 N.E.2d 1134, 1136-39 (2011); *People v. Russell*, 409 Ill. App. 3d 379, 390-96, 947 N.E.2d 789, 799-803 (2011); *People v. Peters*, 2011 IL App (1st)

092839 ¶ 41, 955 N.E.2d 640, 651.

¶ 29 C. Defendant's Alternative Claim That the Trial Court's Written Judgment Should Be Corrected To Reflect 225 Days of Sentencing Credit

¶ 30 Alternatively, defendant contends that the trial court's written judgment should be corrected to reflect its intent to award defendant 225 days of sentencing credit. The State concedes. We accept the State's concession.

¶ 31 Here, the record shows that the trial court awarded defendant 225 days of credit against his sentence as calculated in defendant's presentence investigation report. However, the court's written judgment reflected only 185 days of credit. Because oral pronouncements trump the court's written judgment, as the written judgment is merely intended to be evidence of the court's sentencing pronouncement (*People v. Roberson*, 401 Ill. App. 3d 758, 774, 927 N.E.2d 1277, 1291 (2010)), we remand with directions that the court correct its sentencing judgment to reflect its intent to award defendant 225 days of sentencing credit.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm as modified. We remand with directions for issuance of a modified written judgment order reflecting defendant's 225 days of sentencing credit. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 34 Affirmed as modified and remanded with directions.